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No. 85-1481

In the Supreme Court of the United States

OCTOBER TERM, 1985

STATE OF IOWA EX REL. THOMAS J. MILLER, ATTORNEY GENERAL, ET AL., PETITIONERS

v.

RICHARD E. LYNG, SECRETARY OF AGRICULTURE, AND THE DEPARTMENT OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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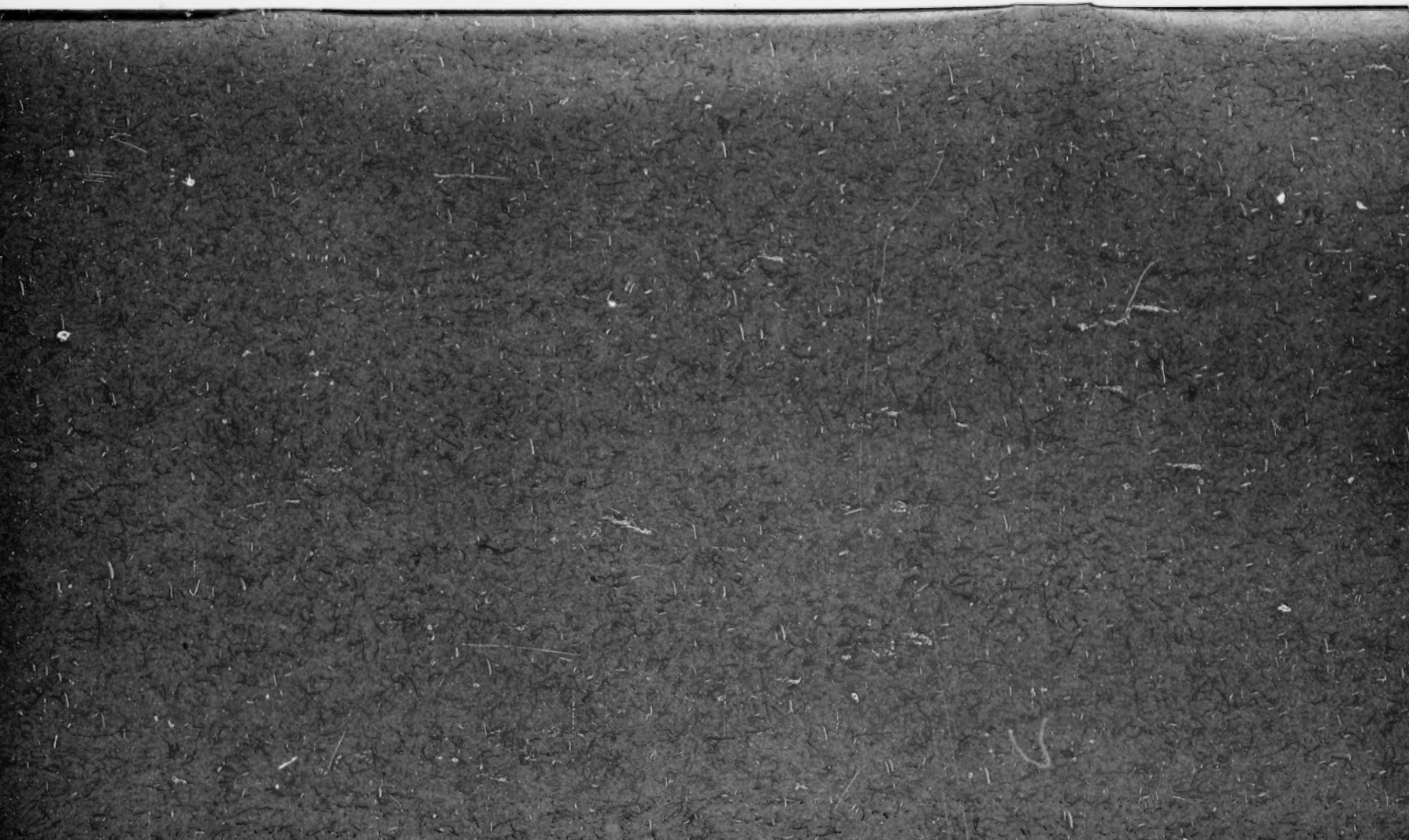

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MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners, the State of Iowa and several individual Iowa farmers, contend that the court of appeals erred in affirming the dismissal of their claims for relief under the Livestock Feed Program (LFP), 7 U.S.C. 1427, and the Emergency Feed Program (EFP), 7 U.S.C. 2267, on the basis that the claims are barred under the anti-injunction provision of 15 U.S.C. 714b(c). They also contend that the court of appeals erred in affirming the dismissal of the State's complaint for lack of standing.

1. a. This suit was brought by the State of Iowa and several individual Iowa farmers, seeking an injunction requiring implementation of various federal agricultural disaster relief programs to relieve the effects of the 1983

drought.[1] The district court denied petitioners' motion for a preliminary injunction and dismissed the complaint. It concluded (Pet. App. 68-76) that the permissive language authorizing each of the programs in issue committed implementation decisions to agency discretion by law, and therefore the Secretary's decision not to implement them was not judicially reviewable. See 5 U.S.C. 701(a)(2). The district court also held that the State of Iowa lacked standing because (1) Iowa's allegations that denial of relief would lead to increased unemployment, depletion of tax revenues, unequal treatment of its citizens in the federal system, and general loss of social and economic well-being of its citizens, were insufficient to confer standing on the State to sue in its own behalf, and (2) the State could not maintain an action as parens patriae on behalf of its citizens against the federal sovereign (Pet. App. 58-68).

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[1]See Complaint, Clerk's Record in the District Court (C.R.) (filed in lieu of an appendix in the court of appeals) at C.R. 1-14, and Complaint of Applicants for Intervention, C.R. 35-55. The Secretary had already provided substantial assistance to Iowa farmers under the federally-subsidized crop insurance program (see 7 U.S.C. 1501 *et seq.*) (almost $40 million in indemnities for the 1983 crop year in Iowa); federal loan programs (including more than $100 million in disaster emergency loans and economic emergency loans under 7 U.S.C. 1961); a program for the sale of stockpiled feed grain at reduced prices (see 7 U.S.C. 1427) (Iowa farmers purchased more than 2.6 million bushels of such grain in late 1983 and early 1984); and by relaxing the restrictions on conservation use acreage under 7 U.S.C. 1444d(e)(4) while permitting farmers to continue to receive federal cash and in-kind benefits under the conservation program. C.R. 20-23.

b. Petitioners appealed the decision as to three of the programs: the Livestock Feed Program (LFP), 7 U.S.C. 1427;[2] the Emergency Feed Program (EFP), 7 U.S.C. 2267;[3] and the discretionary portion of the Special Disaster Payment Program (SDPP), 7 U.S.C. 1444d(b)(2)(D).[4]

The court of appeals unanimously affirmed the dismissal of the claims under the LFP and the EFP, and the dismissal of the State of Iowa for lack of standing (Pet. App. 46 n.1, 17-32). The court noted (*id.* at 46 n.1) that the enabling legislation of the Commodity Credit Corporation (CCC) "precludes issuance of an injunction against the Corporation." See 15 U.S.C. 714b(c) ("[t]he Corporation—* * * [m]ay sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property"). Because issuance of LFP and EFP benefits is carried out by the CCC, the court held it was "unable to authorize the relief requested by [petitioners] even if it were warranted," and

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[2]In relevant part, 7 U.S.C. 1427 provides that "[t]he Commodity Credit Corporation [CCC] * * * may make feed [grain] owned or controlled by it available at [substantially reduced prices]" to assist livestock producers in distress caused by natural disaster where "the Secretary determines that an emergency exists which warrants such assistance."

[3]7 U.S.C. 2267(a) provides, in relevant part, that the Secretary of Agriculture "may implement [a program of cash payments to livestock producers, administered by the CCC (see 7 U.S.C. 2267(f)), for the purchase of feed grain] * * * where, because of * * * natural disaster, the Secretary determines that an emergency exists."

[4]The discretionary SDPP, 7 U.S.C. 1444d(b)(2)(D), provides that the "Secretary may make disaster payments [notwithstanding the availability of crop insurance, which would ordinarily preclude such payments, 7 U.S.C. 1444d(b)(2)(C)] * * * whenever [he] determines that" "substantial" production losses due to natural disaster have caused an "economic emergency" for which crop insurance and other federal assistance are "insufficient," and "additional assistance must be made available to * * * producers to alleviate" the emergency.

was "unable to consider [petitioners'] request for an injunction under these statutes" (Pet. App. 46-47 n.1).[5]

With respect to Iowa's standing, the court of appeals agreed (Pet. App. 17-27) with the district court that the State's allegations were generalized grievances common to all of its citizens, and " 'fail to constitute distinct, palpable injuries to the State as a [S]tate' " (*id.* at 21-22 (footnote omitted)). Such economic consequences are " 'incidental' " and too " 'distantly related to the wrong for which relief is sought * * * to be cognizable for purposes of standing' " (*id.* at 23, citing *Pennsylvania* v. *Kleppe*, 533 F.2d 668, 672 (D.C. Cir.), cert. denied, 429 U.S. 977 (1976), and *Warth* v. *Seldin*, 422 U.S. 490, 504-507 (1975)), and "the remedy to be offered by this action [is] an insufficient guarantee of solvency to warrant state standing in this case" (Pet. App. 26-27). Nor could the State sue as parens patriae on behalf of its citizens (*id.* at 27-30), because a state does not have parens patriae standing to bring an action to enforce its citizens' federal rights with respect to the federal government (*ibid.*). See *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U.S. 592, 610 n.16 (1982); *Massachusetts* v. *Mellon*, 262 U.S. 447, 485-486 (1923) ("In that field it is the United States, and not the State, which represents them as *parens patriae*.").

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[5]With Judge Fagg dissenting, the panel reversed the dismissal of the SDPP claim and remanded the case for further proceedings on petitioners' request for an injunction requiring implementation of the discretionary SDPP (Pet. App. 5-17, 31-51). Although the SDPP is also administered by the CCC, the majority ruled that Section 714b(c) does not preclude judicial relief. The court remanded the case and directed the district court to "consider [petitioners'] requests for * * * injunctive relief compelling the Secretary to implement the SDPP" (Pet. App. 31).

The government has filed a petition for a writ of certiorari challenging the Eighth Circuit's judgment on the discretionary SDPP claims (No. 85-1818). The Court need not grant the instant petition in order to determine the issues presented in the government's petition.

2. The portions of the decision below for which petitioners seek review are correct and do not conflict with any decision of this Court or any other court of appeals. Accordingly, further review is not warranted.

a. Petitioners' contention (Pet. 25-31) that Section 714b(c) does not bar their claims is without merit. They describe this suit (Pet. 25) as an "attack under the Administrative Procedure Act * * * to challenge program rules promulgated by the Secretary or to force the Secretary to comply with rules already in place," and they contend that the anti-injunction provision cannot prevent a court from entertaining such a suit simply because the programs involved are administered by the CCC. The relief they seek, however, goes well beyond routine review of agency action. Petitioners' complaints request an "injunction compelling [respondents] to exercise their discretion and implement the [described] disaster relief programs" (C.R. 8, 42). As the complaints, their attachments (letters from the Governor of Iowa and an Iowa Congressman asking the Secretary for assistance to Iowa farmers under the programs (C.R. 9-12)), and the affidavits of individual petitioners (C.R. 44-55) show, the remedy petitioners seek is injunctive relief requiring the implementation of programs *for the purpose of granting benefits*. Such an order would clearly amount to an injunction against the CCC, the entity that would pay the requested benefits. But the anti-injunction provision was designed to preclude just such interference with the functions of the CCC. See S. Rep. 1022, 80th Cong., 2d Sess. 10 (1984) (the preclusion of "attachment, injunction, garnishment, or similar process * * * against the Corporation or its property" is intended to avoid the "possible detriment to the Government through hindrance or obstruction of the Corporation's operations, if it were made amenable to such processes").

There are no appellate decisions to the contrary. *Mitchell* v. *Block*, 551 F. Supp. 1011 (W.D. Va. 1982), relied on by petitioners (Pet. 28-31), is the only other decision construing the anti-injunction provision. In *Mitchell*, the district court concluded that it had jurisdiction notwithstanding Section 714b(c) to require the Secretary to issue a grade for untied burley tobacco (when the Secretary had determined to grade only tied or baled tobacco), although such grading would trigger eligibility for price support paid by the CCC. It is clearly distinguishable from this case. The tobacco price support program in *Mitchell* had already been implemented, and all that remained to be determined was how a producer must prepare his commodity for market in order to qualify for benefits. In that context, the court ruled merely that the Secretary may not create arbitrary and capricious distinctions between persons otherwise eligible under a program that was already implemented; its order did not constitute an injunction compelling the implementation of a CCC program, as petitioners demand here.[6]

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[6]There is no merit to petitioners' underlying challenge to the Secretary's decision not to utilize the LFP and the EFP. Because of its conclusion that Section 714b(c) bars relief, the court of appeals did not reach this question and it is therefore not properly before this Court.

In any event, as the district court recognized (Pet. App. 71-72), implementation of these programs is committed to agency discretion under the plain terms of the enabling statutes (see notes 2, 3, *supra*). Petitioners have cited nothing in the statutes or elsewhere that would restrict the Secretary's discretion whether to exercise his authority. They argue only that, because the Secretary has issued regulations governing the provision of assistance under these programs once they are implemented (see 7 C.F.R. 1475.50-1475.68 and 1475.1-1475.17), the Secretary must "abide by [these rules]" (Pet. 19) and provide benefits to them. The regulations, however, which generally establish application procedures, eligibility criteria and levels of assistance, do not speak to the question whether to implement the programs in the first instance. Thus, until the Secretary has determined to implement the

b. There is also no merit to petitioners' contention (Pet. 31-37) that the State of Iowa has standing to maintain this suit.[7] The State argues (Pet. 32-33) that its "allegations of fiscal harm" and its "vital interest [as a provider of public services] in maintaining revenues and controlling expenditures" are "similar [to the] fiscal interests" for which courts have found states had standing to sue in their own behalf. The cases cited by the State (Pet. 33) do not support this contention; rather, each premised standing on a much more immediate and direct impact of the challenged federal action on state finance and functions. See *Carey* v. *Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) (alleged census undercount would dilute a city's representation in Congress and erode its share of federal aid and revenue sharing funds); *Alabama ex rel. Baxley* v. *TVA*, 467 F. Supp. 791 (N.D. Ala. 1979), rev'd on other grounds, 636 F.2d 1061, 1063-1064 (5th Cir.), cert. denied, 454 U.S. 837 (1981) (state's "proprietary" interest in the interpretation of a federal statute requiring the TVA to maintain its " 'principal office' " within the state); *City of New York* v. *Heckler*, 578 F.

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programs, there is nothing in these regulations with which he is required to comply.

Petitioners' challenge to 7 C.F.R. 1475.53 (Pet. 26-28), which suspends the availability of the EFP after March 9, 1982, is similarly unavailing. In issuing that regulation, the Secretary announced that due to budgetary constraints he would no longer be considering applications for assistance under the EFP, but would reconsider implementing the program should future conditions warrant (47 Fed. Reg. 34356-34357 (1982)). That is plainly within his broad discretionary power under the terms of 7 U.S.C. 2267 and, contrary to petitioners' contention (Pet. 27), does not "abolish [the EFP] altogether by administrative fiat."

[7]There is no question of the standing of the individual farmer petitioners to litigate all the issues the State has attempted to raise in this action. Thus, the state standing question does not affect the outcome of this litigation. Nor, of course, is the State prevented from expressing its views as amicus curiae.

Supp. 1109, 1121 (E.D.N.Y.), aff'd on other grounds, 742 F.2d 729 (2d Cir. 1984), cert. granted, No. 84-1923 (Oct. 7, 1985) (state and city have standing to challenge procedures for determining eligibility for Social Security disability and supplemental security income benefits, since those programs were enacted in part to relieve welfare burdens of state and local governments). Moreover, Iowa's alleged fiscal injury is just the sort of generalized and hypothetical claim of loss of tax revenue and injury to the state's economy as a whole that this Court has frequently rejected as insufficient to confer standing. See, *e.g.*, *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975); *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208 (1974); *Minnesota* v. *Northern Securities Co.*, 194 U.S. 48 (1904). See also, *Pennsylvania* v. *Kleppe*, 533 F.2d 668, 672 (D.C. Cir.), cert. denied, 429 U.S. 977 (1976) (footnote omitted) (state's claim that denial of Small Business Administration disaster loans to its citizens would deplete its tax base was "generalized grievance * * * so distantly related to the wrong for which relief is sought, as not to be cognizable for purposes of standing").

The state is also foreclosed from maintaining this action as parens patriae on behalf of its citizens. Although the sort of quasi-sovereign interest in the general well-being of its citizens asserted by the state here would normally support parens patriae standing in other contexts, this Court has recently reconfirmed that "a State does not have standing as *parens patriae* to bring an action against the Federal Government." *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U.S. 592, 610 n.16 (1982); *Massachusetts* v. *Mellon*, 262 U.S. 447, 485-486 (1923). Petitioners argue (Pet. 33-37) that *Alfred L. Snapp* reached this question only in dicta, and that courts of appeals are divided on the applicability of *Mellon* to suits such at this one to enforce (rather than to overturn) federal law. The cases they cite to support parens patriae standing, however, all predate *Alfred L. Snapp*, and

either did not involve a suit against the federal government,[8] did not squarely address the question,[9] or did not need to reach the question because the state had standing to sue in its own behalf.[10] In *Pennsylvania* v. *Kleppe*, 533 F.2d at 676-677, a case closely analogous to this one (involving SBA disaster loans), the District of Columbia Circuit stated the principles that govern here:

> The individual's dual citizenship in both state and nation, with separate rights and obligations arising from each, suggests that both units of government act as *parens patriae* within their separate spheres of activity. The general supremacy of federal law gives some reason to conclude that the federal *parens patriae* power should not, as a rule, be subject to the intervention of states seeking to represent the same interest of the same citizens. In the terms used by the *parens patriae* cases, the state can not have a quasi-sovereign interest because the matter falls within the sovereignty of the Federal Government.[11]

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[8] *Georgia* v. *Pennsylvania R.R.*, 324 U.S. 439 (1945).

[9] *Florida* v. *Weinberger*, 492 F.2d 488, 494 (5th Cir. 1974) (without mentioning the term parens patriae, holding state had standing to challenge regulation governing state licensing board for Medicaid nursing home administrators, based on state's interest "both in the manner in which the Medicaid program is administered vis-a-vis its citizens and in being spared the reconstitution of its statutory program").

[10] *Carey* v. *Klutznick*, 637 F.2d at 838; *Washington Utilities & Transportation Comm'n* v. *FCC*, 513 F.2d 1142, 1152 (9th Cir.), cert. denied, 423 U.S. 836 (1975).

[11] In addition, some courts have held that "*[p]arens patriae* standing also requires a finding that individuals could not obtain complete relief through a private suit." *Abrams* v. *11 Cornwell Co.*, 695 F.2d 34, 40 (2d Cir. 1982). See also *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 266 (1972); *Pennsylvania* v. *National Association of Flood Insurers*, 520 F.2d 11 (3d Cir. 1975). Here, the individual farmer petitioners are fully able to obtain the relief to which they may be entitled.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General

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